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April 4, 2005

DOCKET FILE COPY ORIGINAL

Our file No. 20776-00107-61

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-B204-C
Washington, DC 20554

RECEIVED

APR - 5 2005

Federal Communications Commission
Office of Secretary

Reference: MM Docket No. MB 05-10
RM 11140
Monument, OR

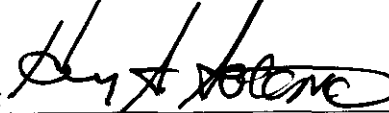
Dear Madam Secretary:

Submitted herewith on behalf of Horizon Broadcasting Group, LLC, are an original and four copies of its reply comments in the above-referenced proceeding titled *Notice of Proposed Rulemaking*, DA 05-77, released January 28, 2005.

Should you have any questions, please communicate directly with the undersigned.

Respectfully submitted,

HORIZON BROADCASTING GROUP, LLC

By: 

Henry A. Solomon
Its Attorney

HAS:ar
Enclosure
cc: w/encl. Mr. John A. Karousos (FCC)

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
Amendment of Section 73.202(b)) MM Docket No. MB 05-10
Table of Allotments) RM-11140
FM Broadcast Stations)
(Monument, Oregon))

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APR - 5 2005

To: Chief, Allocations Branch
Policy and Rules Division
Media Bureau

Federal Communications Commission
Office of Secretary

**REPLY COMMENTS OF HORIZON BROADCASTING GROUP LLC IN PARTIAL
OPPOSITION TO COUNTERPOPOSAL AND REQUEST FOR ORDER TO SHOW
CAUSE**

Horizon Broadcasting Group LLC ("HBG"), licensee of station KWPK-FM, Sisters, Oregon,¹ respectfully files its Reply Comments in the above-entitled matter.² In support hereof the following is shown:

SSR Communications Incorporated ("SSR") is the proponent of a "Counterproposal and Request for Order to Show Cause." SSR proposes various allotment changes at communities in Oregon and Idaho, including Monument, Oregon. It seeks to allot vacant Channel 280C to that community. If SSR's proposal is approved at the site specified in its Counterproposal, HBG would be ordered to change KWPK-FM's channel from 281C2 to 282C2. HBG does not object to the proposed allotment of Channel 280C to Monument, OR, but submits that in the circumstances of this case, a show cause order against HBG is unnecessary. Broadcast stations should be required to

¹ HBG became the licensee of KWPK-FM on March 31, 2005, succeeding Thunderegg Wireless, L.L.C.

² These Reply Comments are timely filed in accordance with the FCC's *Notice of Proposed Rule Making*, DA 05-77, released January 28, 2005.

switch channels when that action would comply with the Commission's technical requirements and would serve the public interest.³ This is not such a case.

Requiring KWPK-FM to switch channels would be a burden to HBG and to its station's listeners who have become accustomed to receiving programming on 104.1MHz. The attached Engineering Statement by Hatfield and Dawson shows that a perfectly adequate alternative allotment site is available for Channel 280C at Monument. A class C operation from that site would enable SSR to accomplish its allotment objective *without* the need for a channel change at Sisters.

The Engineering Statement's channel study demonstrates that the alternate site is fully spaced, and complies with the Rules prescribing the separations among FM allotments at allotment coordinates of N44-49-51 x W119-12-45. The site is located 16 km from Monument. The nominal distance to the 70 dBu F-(50, 50) contour for minimum-facilities Class C station is 59.1 kilometers. Therefore, the alternate site will permit greater than 70 dBu coverage for all of Monument.

The instant case is distinguishable from another alternate site case, *Park City, Montana*.⁴ Responding to a petition filed by KLZY, Channel 223C, Powell, Wyoming, the FCC proposed to substitute Channel 223C0 for Channel 223C and to change KLZY's community of license to Park City, Montana. In order to accommodate KLZY's proposal, the Commission ordered KKRY, Miles City, Montana, to switch from Channel 223C to Channel 222C. KKRY objected to the proposed frequency change, arguing that by changing reference coordinates for KLZY at Park City, KKRY could continue operating on Channel 223C. The Commission rejected KKRY's proposed change in the reference coordinates for KLZY at Park City, pointing out that the coordinates originally proposed by KLZY were technically dissimilar to the alternate site and that KLZY's reference

³ It is noted that at page 3 of its counterproposal SSR states that "should it become the successful applicant for FM Channel 280C at Prairie City [sic] it will reimburse [the] verifiable, legitimate, and prudent expenses related to the change of [KWPK]. . ." Presumably the burden would fall upon the successful applicant for Channel 280C at *Monument*, rather than Prairie City, since a Channel 280C allotment has not been proposed by SSR.

⁴ *Report and Order* (DA 64-285), 19 FCC Rcd 2092 (MM Bur 2004)

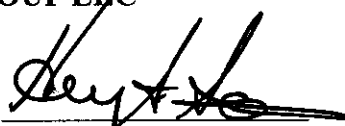
coordinates correspond to a developed transmitter site with existing towers. In the present case, however, Hatfield and Dawson has been unable to verify that any towers or other transmitting facilities occupy SSR's proposed site, that the site is otherwise unique or that specifying the alternate coordinates proposed by HBG would compromise in any way, the efficient operation of SSR's proposed Class C facility.

In addition to the alternate site's technical suitability an allotment there will be more efficient from administrative and practical standpoints. Although SSR promises to apply for a Channel 280C facility at Monument there is no guarantee that it will be the winning bidder at auction. Meanwhile, the FCC will have amended the FM Table of Allotments at Sisters to substitute Channel 281 for Channel 282. The auction winner (whether SSR or a third party) could decide to construct at a new set of coordinates or operate with reduced facilities. Although in either case KWPK-FM may not be compelled to cease operations on Channel 281, it will still have to petition the FCC to restore the Channel 281 allotment to Sisters. In that event, the permittee should be required to reimburse HBG for fees and costs it will incur in connection with the re-amendment process.

In sum, since SSR has not shown that its proposed site contains a tower or other transmitting facilities or that the allotment coordinates establish that its choice is the only practical site for a Channel 280C operation, it is unnecessary to initiate a show cause action against HBG: SSR's allotment plans can be satisfied at the alternate Channel 280 coordinates specified in the Engineering Statement. Monument would thus gain its first local transmission service, and KWPK-FM would be able to continue longstanding service to listeners on Channel 281, and avoid any disruption to the longstanding service provided by KWPK-FM on Channel 281C2, and possible additional proceedings at the FCC.

Respectfully submitted,

**HORIZON BROADCASTING
GROUP LLC**

By: 

Henry A. Solomon
Its Attorney

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April 5, 2005

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Engineering Statement – Reply Comments
MB Docket No. 05-10
March 2005

This Engineering Statement has been prepared on behalf of Horizon Broadcasting Group, LLC ("Horizon"), licensee of station KWPK-FM Channel 281C2 at Sisters, Oregon.

On March 21, 2005, SSR Communications, Inc. ("SSR") filed a counterproposal in MB Docket No 05-10, proposing a number of allotment changes at communities in Oregon and Idaho. Among the SSR proposals is the allotment of vacant Channel 280C at Monument, Oregon. SSR maintains that the allotment of Channel 280C at Monument requires that Channel 282C2 be substituted for Channel 281C2 at Sisters for use by KWPK-FM, and has requested that the Commission issue an Order to Show Cause to the KWPK-FM licensee.

No such channel substitution at Sisters is necessary to effect SSR's proposed allotment of Channel 280C at Monument. Indeed, SSR appears to have gone out of its way to select an *allotment site for Channel 280C which conflicts with the present operation of KWPK-FM.*

In the instant case, the channel change proposed for KWPK-FM is an unnecessary burden, because an alternative allotment site is available for Channel 280C at Monument which obviates the need to modify the Sisters allotment.

As outlined in the attached channel study, Channel 280C can be assigned for use at Monument in compliance with the Commission's applicable Rules and Regulations regarding the separation among FM allotments at allotment coordinates of N44-49-51 x W119-12-45. This site is located

16 km from Monument. The nominal distance to the 70 dBu F(50,50) contour for a minimum-facilities Class C station is 59.1 kilometers. Therefore, this site will provide greater than 70 dBu coverage for all of Monument.

In the Report and Order in MB Docket No. 02-79, *Park City, Montana*, released on February 9, 2004, the Commission declined to use alternate allotment site coordinates for Channel 223C0 at Park City, Montana, which would have eliminated the need for station KKRY to change channels at Miles City, Montana. In that case, the original petitioner demonstrated that its original proposed allotment coordinates for the reallocation of station KLZY from Channel 223C at Powell, Wyoming, to Channel 223C0 at Park City were at an existing tower site. Furthermore, the petitioner demonstrated that there was a significant difference in elevation between the two sites such that use of the alternate site would have required construction of an 1100 foot tall tower at a location just 700 meters from an interstate highway. Pilots operating under visual flight rules ("VFR") often use major highways as landmarks, and therefore the FAA is reluctant to approve towers over 500 feet within two miles of major highways.

Park City involved a forced channel change triggered by the reallocation of an existing station, KLZY. In contrast, the instant case involves a proposed forced channel change triggered by the proposed allotment of a vacant channel which will be awarded at auction. Furthermore, SSR has not represented that its proposed Channel 280C allotment coordinates are the only practical site. This firm has been unable to verify the presence of any towers or transmitting facilities at SSR's coordinates. Nor does there appear to be any reason why SSR's coordinates would be uniquely suited for service to Monument. The alternate allotment coordinates specified herein are not within two miles of any major highway or otherwise known to be located near any VFR route.

Conclusion

Since SSR has no claim on the proposed Monument allotment, and has not represented that its proposed Channel 280C allotment coordinates are the only practical site for that allotment, the imposition of a channel change upon KWPK-FM represents an unnecessary burden both upon Horizon and upon the eventual Monument permittee. That burden can be eliminated by the use

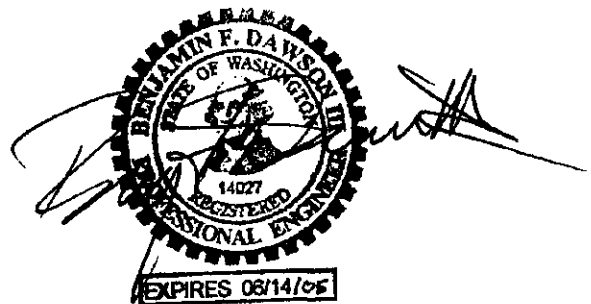
Hatfield & Dawson Consulting Engineers

of the alternate Channel 280C coordinates specified in this Engineering Statement, thereby permitting Monument will to receive its first local service, while obviating the need to cause disruption to the service presently provided by KWPK-FM.

Statement of Engineer

This Engineering Statement, supporting Reply Comments in MB Docket No. 05-10, has been prepared by Erik C. Swanson under my direct supervision. I am an experienced radio engineer whose qualifications are a matter of record with the Federal Communications Commission. I am a partner in the firm of Hatfield & Dawson Consulting Engineers and am Registered as a Professional Engineer in the States of Washington and California.

Signed this 31st day of March, 2005.



Benjamin F. Dawson III, P.E.

A handwritten signature in cursive script, reading "Erik C. Swanson".

Erik C. Swanson

Hatfield & Dawson Consulting Engineers

FMSTUDY.EXE Copyright 2004, Hatfield & Dawson, LLC Version 1.70

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FM Database Date: 050318

SEARCH PARAMETERS

Page 1

Channel: 280C 103.9 MHz
 Latitude: 44 49 51
 Longitude: 119 12 45
 Safety Zone: 32 km
 Job Title: MONUMENT 280C ALTERNATE SITE

Call Status	City St	FCC File No.	Channel Freq.	ERP(kW) HAAT(m)	Latitude Longitude	Bearing deg-True	Dist (km)	Req (km)
KWHT LIC	PENDLETON OR	BLH-840530BY	278C1 103.5	100.000 219.0	45-47-51 118-22-17	31.2	126.06 21.06	105 CLEAR
KWHT CP	PENDLETON OR	BPH-011102AAK	278C1 103.5	100.000 219.0	45-48-02 118-22-36	30.9	126.14 21.14	105 CLEAR
KXPC-FM CP	LEBANON OR	BPH-010718AAQ	279C 103.7	90.000 624.0	44-34-49 122-30-07	265.0 SS	262.18 21.18	241 CLEAR
KXPC-FM ADD	PAISLEY OR	RM	279C 103.7	0.000 0.0	42-41-38 120-32-41	204.7	260.54 19.54	241 CLEAR
K279AK CP	GRANGER WA	BNPFT-030724AFY	279D 103.7	0.062 204.0	46-18-43 120-04-53	338.0	178.04 0.00	0 TRANS
NEW-T APP	LEWISTON ID	BNPFT-030312AED	280D 103.9	0.250 597.0	46-27-34 117-01-51	42.3	248.38 0.00	0 TRANS
VAC	WEISER ID	RM-9901	280C1 103.9	0.000 0.0	44-20-39 117-07-14	107.4	174.71 -95.29	270 SHORT
NOTE: SSR PROPOSES TO CHANGE THIS ALLOTMENT TO 247C1								
NEW-T APP	CHARLESTOWN OR	BNPFT-030314AMZ	280D 103.9	0.250 66.0	45-51-57 119-18-42	356.2	115.29 0.00	0 TRANS
K280BD LIC	PRINEVILLE OR	BLFT-810508IB	280D 103.9	0.045 DA 785.0	44-26-05 120-57-06	252.9	144.85 0.00	0 TRANS
NEW-T APP	WALLA WALLA WA	BNPFT-030317HAH	280D 103.9	0.140 141.0	46-05-26 118-15-38	27.6	158.57 0.00	0 TRANS
KWPK-FM LIC	SISTERS OR	BLH-010516AAI	281C2 104.1	34.000 180.0	44-04-40 121-19-49	244.3	188.19 0.19	188 CLOSE
KXDD LIC	YAKIMA WA	BLH-020305AAX	281C1 104.1	100.000 DA 245.0	46-30-48 120-24-05	334.1 SS	208.69 -0.31	209 SHORT

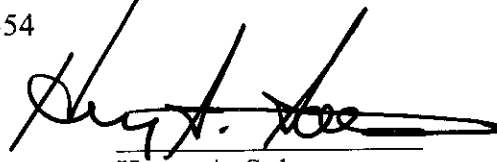
44444 END OF FM SPACING STUDY FOR CHANNEL 280 44444

CERTIFICATE OF SERVICE

I certify that the foregoing "Reply Comments of Horizon Broadcasting Group LLC in Partial Opposition to Counterproposal and Request for Order to Show Cause," was served this day by first class U.S. Mail, postage prepaid, upon the following:

SSR Communications Incorporated
5270 West Jones Bridge Road
Norcross, GA 30092-1628
Attn.: Mr. Matthew K. Wesolowski
Chief Executive Officer

John A. Karousos*
Assistant Chief, Audio Division
Media Bureau
Federal Communications Commission
Washington, DC 20554



Henry A. Solomon

Dated: April 5, 2005

* Served via e-mail